

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 1999-254

October 11, 2000

NORTHERN UTILITIES, INC.-MAINE
Request for Waiver of Chapter 820 and
Motion for Protective Order

ORDER APPROVING
STIPULATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order we approve the Stipulation filed on September 15, 2000 in the above matter and thus require Northern Utilities, Inc. (Northern) to provide its Guardian Care Service, Service Calls, Equipment Sales or Installation, Water Heater Rental, and Conversion Burner Rental through a separate affiliate in accordance with the terms of the Stipulation and the provisions of Chapter 820.

II. BACKGROUND

On April 14, 1999, Northern filed a petition for waivers from Chapter 820 of the Commission's rules. The Examiner issued notice of the proceeding and granted the petitions to intervene of the Public Advocate, the Maine Oil Dealers Association (MODA), Central Maine Power Company (CMP), Enron Energy Marketing and the Plumbing Heating and Cooling Contractors of Maine (PHCC).¹

Northern's testimony was supplied orally in this case. The Commission's Advisory Staff (Advisors), the Public Advocate and the Plumbing and Heating Contractors of Maine issued data requests to which Northern responded. The Public Advocate and the Plumbing and Heating Contractors of Maine filed testimony. The Commission held numerous technical conferences. CMP filed a brief arguing that the services at issue are non-core and that a waiver from ch. 820 should not be granted. Subsequently, Northern filed a stipulation on behalf of itself, the PHCC and the Public Advocate. On September 15, 2000, after a technical conference, these parties submitted a revised stipulation. No party objected to the stipulation.

III. CHAPTER 820

Chapter 820 provides that "[a] utility may not offer core and non-core service through the same corporate entity." Chapter 820 § 3. This provision requires that the utility provide these services through a separate corporate entity. Section 4 of Chapter 820 sets forth the manner in which the value of utility goods, services and intangibles will be determined for the purpose of determining charges for the use of those utility services, goods, and intangibles. Chapter 820 also requires that the utility maintain a

¹ MODA, CMP and Enron were granted discretionary intervenor status. The Examiner granted PHCC's late filed intervention over Northern's objection.

cost allocation manual documenting its cost allocation methodology. In addition, Chapter 820 sets forth certain standards of conduct including the general requirement that

[t]he utility may not act in preference to its affiliate or affiliates in providing access to utility facilities or services or in influencing utility customers to use the services of its affiliates. A utility that provides the name of its affiliate to a customer interested in the services of its affiliate must also provide the names of non-affiliated entities providing such services.

Ch. 820 § 8.

IV. THE STIPULATION

The Stipulation states the signatories' agreement that:

- the services at issue in this case are non-core activities that are subject to the requirements of Chapter 820;
- in accordance with Chapter 820, the services at issue will be provided through a separate corporate entity (Service Affiliate), either an existing entity or a new entity;
- all shared equipment, facilities, services, and personnel shall be priced and charged by Northern to the Service Affiliate in accordance with the provisions of section four of Chapter 820;
- Northern will maintain a cost allocation manual documenting its fully distributed cost methodology and will file a copy of the cost manual 90 days after the date of the final order in this proceeding;
- Northern will file a support services agreement with the Commission 90 days after the date of the final order in this case. The support services agreement will include the services which Northern intends to provide to its Service affiliate;
- Any mailing, marketing and credit services shall be made available at the same price to any competitors providing similar services to those provided by Northern's Service Affiliate;
- Northern's assets that are exclusively used for the Service Business Activities, including customer information developed within the last two years, relating to existing² customers of Water Heater Rentals, conversion Burner Rental, Guardian Care and Service Call services shall be transferred to the Service Affiliate. The service affiliate will

² We read this provision to refer to customers existing at the date of the Commission's Order approving the Stipulation.

make a one-time payment to Northern of \$50,000 as full payment for these assets;

- Future³ customer information provided by Northern will be subject to the requirements of Chapter 820;
- The Service Affiliate shall pay Northern \$25,000 annually for a period of six years for the use of Northern's Good Will as long as the service business activities are provided, but at the end of the six-year period, the Service Affiliate will not be obligated to pay any amount to Northern for the value of Northern's Good Will; and
- Within 60 days of the date of the Order approving the Stipulation, Northern will file a contractor referral program that will be designed in such a way so that the referral program will be free of bias and that Northern will not give preference to its affiliate over other service contractors.

V. STANDARDS FOR APPROVING STIPULATIONS

We have established criteria for approving stipulations. In *Consumers Maine Water Company, Proposed General Rate Increase of Bucksport and Hartland Divisions*, Docket No. 96-739, Order Approving Stipulation (July 3, 1997), we summarized these criteria:

- 1) whether the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;
- 2) whether the process that led to the stipulation was fair to all parties; and
- 3) whether the stipulated result is reasonable and is not contrary to legislative mandate.⁴

Id. at 2 (citations omitted).

VI. DISCUSSION AND DECISION

We conclude that the Stipulation meets the established criteria for approving stipulations. The Stipulation meets the requirements of Chapter 820 in requiring Northern to provide the services at issue in this case in a separate corporate entity. It

³ We read the word "future" to refer to customer information developed after the date of this Order.

⁴In addition, we recognized that we have an obligation to ensure that the overall stipulated result is in the public interest. *Id.*

further ties the cost allocation methodology to the requirements of Chapter 820 and holds Northern to a schedule for compliance with these requirements. Further the signatories to the Stipulation represent a broad spectrum of interest and no party has objected to the Stipulation. We further find that the Agreement is in the public interest. For all of these reasons, we approve the Stipulation.

Accordingly, we

O R D E R

1. That the Stipulation filed on September 15, 2000 and attached hereto is approved;
2. That Northern shall file a cost manual with the Commission 90 days from the date of this Order;
3. That Northern shall provide the services at issue in this case through a separate corporate entity;
4. That Northern shall charge its affiliate for the use of equipment, facilities and services consistent with the requirements of chapter 820;
5. Northern shall file a Support Services Agreement no later than 90 days from the date of this Order;
6. Payment for the use of customer information and Good Will shall be made in accordance with the Stipulation;
7. Northern shall file a contractor referral program 60 days from the date of this order.

Dated at Augusta, Maine, this 11th day of October, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond

COMMISSIONER ABSENT: Nugent

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.